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SENATE

REPORT
101-167

CLARIFYING AND STRENGTHENING THE AUTHORITY FOR CERTAIN DEPARTMENTS OF INTERIOR LAW ENFORCEMENT SERVICES, ACTIVITIES, AND OFFICERS IN INDIAN COUNTRY, AND FOR OTHER PURPOSES

OCTOBER 18 (legislative day, SEPTEMBER 18), 1989.—Ordered to be printed

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Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 498]

The Select Committee on Indian Affairs, to which was referred the bill (H.R. 498) to clarify and strengthen the authority for certain Department of Interior law enforcement services, activities, and officers in Indian country, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is an amendment in the nature of a substitute, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Indian Law Enforcement Reform Act".

DEFINITIONS

SEC. 2. For purposes of this Act—

(1) The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(2) The term "employee of the Bureau" includes an officer of the Bureau.

(3) The term "enforcement of a law" includes the prevention, detection, and investigation of an offense and the detention or confinement of an offender.

(4) The term "Indian country" has the meaning given that term in section 1151 of title 18, United States Code.

(5) The term "Indian tribe" has the meaning given that term in section 201 of the Act of April 11, 1968 (82 Stat. 77; 25 U.S.C. 1301).

(6) The term "offense" means an offense against the United States and includes a violation of a Federal regulation relating to part or all of Indian country.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "Division of Law Enforcement Services" means the entity established within the Bureau under section 3(b).

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(9) The term "Branch of Criminal Investigations" means the entity the Secretary is required to establish within the Division of Law Enforcement Services under section 3(d)(1).

INDIAN LAW ENFORCEMENT RESPONSIBILITIES

SEC. 3. (a) The Secretary, acting through the Bureau, shall be responsible for providing, or for assisting in the provision of, law enforcement services in Indian country as provided in this Act.

(b) There is hereby established within the Bureau a Division of Law Enforcement Services which, under the supervision of the Secretary, or an individual designated by the Secretary, shall be responsible for—

(1) carrying out the law enforcement functions of the Secretary in Indian country, and

(2) implementing the provisions of this section.

(c) Subject to the provisions of this act and other applicable Federal or tribal laws, the responsibilities of the Division of Law Enforcement Services in Indian country shall include—

(1) the enforcement of Federal law and, with the consent of the Indian tribe, tribal law;

(2) in cooperation with appropriate Federal and tribal law enforcement agencies, the investigation of offenses against criminal law of the United States;

(3) the protection of life and property;

(4) the development of methods and expertise to resolve conflicts and solve crimes;

(5) the provision of criminal justice remedial actions, correctional and detention services, and rehabilitation;

(6) the reduction of recidivism and adverse social effects;

(7) the development of preventive and outreach programs which will enhance the public conception of law enforcement responsibilities through training and development of needed public service skills;

(8) the assessment and evaluation of program accomplishments in reducing crime; and

(9) the development and provision of law enforcement training and technical assistance.

(d)(1) The Secretary shall establish within the Division of Law Enforcement Services a separate Branch of Criminal Investigations which, under such inter-agency agreement as may be reached between the Secretary and appropriate agencies or officials of the Department of Justice and subject to such guidelines as may be adopted by relevant United States attorneys, shall be responsible for the investigation, and presentation for prosecution, of cases involving violations of sections 1152 and 1153 of title 18, United States Code, within Indian country.

(2) The Branch of Criminal Investigations shall not be primarily responsible for the routine law enforcement and police operations of the Bureau in Indian country.

(3) The Secretary shall prescribe regulations which shall establish a procedure for active cooperation and consultation of the criminal investigative employees of the Bureau assigned to an Indian reservation with the governmental and law enforcement officials of the Indian tribe located on such reservation.

(e)(1) The Secretary shall establish appropriate standards of education, experience, training, and other relevant qualifications for law enforcement personnel of the Division of Law Enforcement Services who are charged with law enforcement responsibilities pursuant to section 4.

(2) The Secretary shall also provide for the classification of such positions within the Division of Law Enforcement Services at GS grades, as provided in section 5104 of title 5, United States Code, consistent with the responsibilities and duties assigned to such positions and with the qualifications established for such positions.

(3) In classifying positions in the Division of Law Enforcement Services under paragraph (2), the Secretary shall ensure that such positions are classified at GS grades comparable to those for other Federal law enforcement personnel in other Federal Agencies in light of the responsibilities, duties, and qualifications required of such positions.

LAW ENFORCEMENT AUTHORITY

SEC. 4. The Secretary may charge employees of the Bureau with law enforcement responsibilities and may authorize those employees to—

(1) carry firearms;

(2) execute or serve warrants, summonses, or other orders relating to a crime committed in Indian country and issued under the laws of—

(A) the United States (including those issued by a Court of Indian Offenses under regulations prescribed by the Secretary), or

(B) an Indian tribe if authorized by the Indian tribe;

(3) make an arrest without a warrant for an offense committed in Indian country if—

(A) the offense is committed in the presence of the employee, or

(B) the offense is a felony and the employee has reasonable grounds to believe that the person to be arrested has committed, or is committing, the felony;

(4) offer and pay a reward for services or information, or purchase evidence, assisting in the detection or investigation of the commission of an offense committed in Indian country or in the arrest of an offender against the United States;

(5) make inquiries of any person, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter relevant to the enforcement of carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the employee to enforce or carry out tribal laws;

(6) wear a prescribed uniform and badge or carry prescribed credentials;

(7) perform any other law enforcement related duty; and

(8) when requested, assist (with or without reimbursement) any Federal, tribal, State, or local law enforcement agency in the enforcement or carrying out of the laws or regulations the agency enforces or administers.

ASSISTANCE BY OTHER AGENCIES

SEC. 5. (a) The Secretary may enter into an agreement for the use (with or without reimbursement of the personnel or facilities of a Federal, tribal, State, or other government agency to aid in the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the Secretary to enforce tribal laws. The Secretary may authorize a law enforcement officer of such an agency to perform any activity the Secretary may authorize under section 4.

(b) Any agreement entered into under this section relating to the enforcement of the criminal laws of the United States shall be in accord with any agreement between the Secretary and the Attorney General of the United States.

(c) The Secretary may not use the personnel of a non-Federal agency under this section in an area of Indian country if the Indian tribe having jurisdiction over such area of Indian country has objected to the use of the personnel of such agency. The Secretary shall consult with Indian tribes before entering into any agreement under subsection (a) with a non-Federal agency that will provide personnel for use in any area under the jurisdiction of such Indian tribes.

(d) Notwithstanding the provisions of section 1535 of title 31, United States Code, the head of a Federal agency with law enforcement personnel or facilities may enter into an agreement (with or without reimbursement) with the Secretary under subsection (a).

(e) The head of a Federal agency with law enforcement personnel or facilities may enter into an agreement (with or without reimbursement) with an Indian tribe relating to—

(1) the law enforcement authority of the Indian tribe, or

(2) the carrying out of a law of either the United States or the Indian tribe.

(f) While acting under authority granted by the Secretary under subsection (a), a person who is not otherwise a Federal employee shall be considered to be—

(1) an employee of the Department of the Interior only for purposes of—

(A) the provisions of law described in section 3374(c)(2) of title 5, United States Code, and

(B) sections 111 and 1114 of title 18, United States Code, and

(2) an eligible officer under subchapter III of chapter 81 of title 5, United States Code.

REGULATIONS

SEC. 6. After consultation with the Attorney General of the United States, the Secretary may prescribe under this Act regulations relating to the enforcement of criminal laws of the United States and regulations relating to the consideration of

applications for contracts awarded under the Indian Self-Determination Act to perform the functions of the Branch of Criminal Investigations.

JURISDICTION

SEC. 7. (a) The Secretary shall have investigative jurisdiction over offenses against criminal law of the United States in Indian country subject to an agreement between the Secretary and the Attorney General of the United States.

(b) In exercising the investigative authority conferred by this section, the employees of the Bureau shall cooperate with the law enforcement agency having primary investigative jurisdiction over the offense committed.

(c) This Act does not invalidate or diminish any law enforcement commission or other delegation of authority issued under the authority of the Secretary before the date of enactment of this Act.

(d) The authority provided by this Act is in addition to, and not in derogation of, any authority that existed before the enactment of this Act. The provisions of this Act alter neither the civil or criminal jurisdiction of the United States, Indian tribes, States, or other political subdivisions or agencies, nor the law enforcement, investigative, or judicial authority of any Indian tribe, State, or political subdivision or agency thereof, or of any department, agency, court, or offical of the United States other than the Secretary.

UNIFORM ALLOWANCE

SEC. 8. Notwithstanding the limitation in section 5901(a) of title 5, United States Code, the Secretary may provide a uniform allowance for uniformed law enforcement officers under section 4 of this Act of not more than $400 a year.

SOURCE OF FUNDS

SEC. 9. Any expenses incurred by the Secretary under this Act shall be paid for from funds appropriated under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

REPORTS TO TRIBES

SEC. 10. (a) In any case in which law enforcement officials of the Bureau of the Federal Bureau of Investigation decline to initiate an investigation of a reported violation of Federal law in Indian country, or terminate such an investigation without referral for prosecution, such officials are authorized to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe involved that states, with particularity, the reason or reasons why the investigation was declined or terminated.

(b) In any case in which a United States attorney declines to prosecute an alleged violation of Federal criminal law in Indian country referred for prosecution by the Federal Bureau of Investigation or the Bureau, or moves to terminate a prosecution of such an alleged violation, the United States attorney is authorized to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe involved that states, with particularity, the reason or reasons why the prosecution was declined or terminated.

(c) In any case—

(1) in which the alleged offender is an Indian, and

(2) for which a report is submitted under subsection (a) or (b), the report made to the Indian tribe may include the case file, including evidence collected and statements taken, which might support an investigation or prosecution of a violation of tribal law.

(d) Nothing in this section shall require any Federal agency or official to transfer or disclose any confidential or privileged communication, information, or sources to the officials of any Indian tribe. Federal agencies authorized to make reports pursuant to this section shall, by regulations, adopt standards for the protection of such communications, information, or sources.

PURPOSE

The purpose of H.R. 498 is to clarify and strengthen the authority of the law enforcement personnel and functions within the Bureau of Indian Affairs (BIA) of the Department of Interior for law enforcement activities.

BACKGROUND

The House Committee on Interior and Insular Affairs held a series of hearings during the 100th and 101st Congresses which examined the problems of law enforcement in Indian country. As part of their findings the Committee determined that the Bureau of Indian Affairs employs approximately 503 law enforcement officers and provides law enforcement services on 163 reservations or areas, in 23 states. There are approximately 900 law enforcement officers who are employed by Indian tribes. About 700 of these officers have been commissioned as BIA Deputy Special Officers.

In addition, the Committee found that many of the problems of law enforcement programs in Indian country resulted from the lack of clear statutory authority for the law enforcement functions of the Bureau of Indian Affairs on Indian reservations and in Indian country. The current authority relied upon by the Bureau of Indian Affairs for BIA law enforcement officers to carry firearms, conduct searches and make arrests is based on an interpretation of the Snyder Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13); the Indian Liquor Laws (18 U.S.C. 3055); and various Interior Department appropriation acts since 1939 which have contained the following or similar language, "For maintaining law and order on Indian reservations * * *".

Although these laws represent some statutory recognition of the Bureau of Indian Affairs authority to provide law enforcement services on Indian reservations and in Indian country, there is no explicit statutory authority for BIA officers to carry firearms, conduct searches and seizures, carry out investigations, and make arrests. Without express statutory authority to carry out these functions, BIA law enforcement authority could be challenged in the courts and BIA officers could be subject to suit and held personally liable for their actions. In comparison, other federal agencies charged with performing law enforcement functions have explicit statutory authority which delineates their powers and duties. For example, title 8 of the United States Code provides explicit authority for Federal Bureau of Investigation officers to carry firearms and to make arrests (18 U.S.C. 3052). A similar authority was provided to the National Park Service in the Act of October 7, 1976 (90 Stat. 1941, 16 (U.S.C. 1a-6); the Bureau of Land Management in the Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1733); and the Fish and Wildlife Service in the Act of November 8, 1978 (92 Stat. 3111; 16 U.S.C. 460k-3).

In order to avoid a successful judicial challenge to the BIA's authority and to prevent lawsuits which may seek to hold BIA officers personally liable for their "unauthorized" law enforcement actions, this bill provides comprehensive statutory authority for the Bureau of Indian Affairs to provide law enforcement services on Indian reservations and in Indian country. Several tribal witnesses testified in support of the provisions of H.R. 498. There was significant testimony at the hearing in opposition to section 3(d)(2) of H.R. 498 which would exempt the newly created Branch of Criminal Investigations from tribal contracting under Public Law 93-638. The Bureau of Indian Affairs also provided testimony at the

hearing stating the Administration's opposition to an exemption from the provisions of Public Law 93-638.

Tribal witnesses also expressed concern that H.R. 498 did not contain provisions that would have required federal law enforcement agencies investigating major crimes on reservations to provide a copy of the case file, including witness statements and other evidence, to tribal law enforcement authorities when an investigation has been terminated or a prosecution declined so that tribal authorities can pursue a criminal action in tribal court for a violation of tribal law. Without access to this evidence, the opportunity for tribal law enforcement officials to prosecute a crime under tribal law is often lost, evidence that can be discovered independently may have been destroyed, and the perpetrator of the crime has fled from the area under the jurisdiction of the tribal court. Currently, access to information from the U.S. attorneys and federal law enforcement officials varies from reservation to reservation and from U.S. attorney to U.S. attorney.

COMMITTEE AMENDMENT

The Committee adopted an amendment in the nature of a substitute. The substitute contains four major differences from the House version. The first change is in Section 3(d) which deletes the language establishing line authority for the Branch of Criminal Investigations. This language was taken out because the Secretary of the Interior currently has the authority to promulgate regulations which would provide for line authority and therefore the language was deemed unnecessary.

The second change in this section eliminates the language which created an exemption for the Branch of Criminal Investigations from the provisions of the Indian Self-Determination and Education Assistance Act and thereby prevented Indian tribes from contracting under Public Law 93-638. Instead, the substitute provides under Section 6 that the Secretary may prescribe regulations relating to the consideration of applications for contracts pursuant to Public Law 93-638 to perform the functions of the Branch of Criminal Investigations after consultation with the U.S. Attorney General. This change was supported by the testimony of tribal witnesses, the BIA, and representatives of the Department of Justice at the Committee's July 21st hearing on H.R. 498. Currently, there are several Indian tribes which have contracted for and are providing the Criminal Investigations function on their reservations. The Committee received testimony that several of these law enforcement programs have been run in an exemplary fashion. The Committee felt strongly that the Federal Government's policy of Indian Self-Determination should be maintained and Indian tribes should be allowed and encouraged to pursue these policy objectives.

The third change in the substitute amendment is under section 5 which provides that the Secretary may enter into agreements for the use of personnel or facilities of a Federal, tribal, state, or other government agency to aid in the provision of law enforcement services. In subsection (c), it provides that the Secretary may not use the personnel of a non-Federal agency if the Indian tribe with jurisdiction over the affected area of Indian country, has objected to

the use of that agency's personnel. Subsection (c) was amended to provide for consultation between the Secretary and the affected Indian tribe prior to entering into an agreement under this section. The amendment would not require a resolution from the affected Indian tribe raising a formal objection. The Committee felt that an affected Indian tribe could raise a formal objection to a proposed agreement under this section by either a tribal council resolution or in a letter from the tribal chairman. Therefore, the language in the House version was considered unnecessary.

The last change in the substitute amendment provides that the Federal law enforcement agencies investigating major crimes on reservations are authorized to provide reports to the appropriate governmental and law enforcement officials of the Indian tribe when an investigation has been terminated or a prosecution declined. In addition, if the terminated prosecution involves an Indian defendant it would authorize the U.S. Attorney to transfer all relevant information and evidence to the appropriate tribal officials to facilitate a possible tribal prosecution for a violation under tribal law. Finally, it provides that the U.S. Attorney may withhold or refuse to disclose any confidential or privileged communications or information. It also provides for the promulgation of regulations and standards that would govern the protection of such communications and information. This change reflects the testimony the Committee received from tribal witnesses at the July 21st hearing and testimony from Indian tribes to the Special Committee on Investigations regarding law enforcement problems in Indian country. This language was amended at the mark-up of H.R. 498 to address the concerns raised by the Department of Justice.

OTHER CONSIDERATIONS

Section 4 sets forth with specificity the authority of the Secretary for charging an employee of the Bureau of Indian Affairs with law enforcement responsibilities. Section 3(e)(1) directs the Secretary to establish appropriate standards of education, experience, training and other relevant qualifications for law enforcement personnel of the Division of Law Enforcement Services who are charged with law enforcement responsibilities pursuant to Section 4. The Committee is concerned that the standards established by the Secretary should be comparable to the standards of other Federal law enforcement officers, and believes that the training and educational standards of the United States Marshals Office would provide an appropriate guide to establishment of standards for BIA law enforcement officers.

The Committee is also concerned that the provisions of Section 3(e) (2) and (3) requiring the Secretary to provide for the classification of BIA law enforcement positions at levels consistent with the qualifications, responsibilities and duties assigned to such positions and to ensure that such positions are classified at GS grade levels comparable to those for other Federal law enforcement personnel in other Federal agencies be fully implemented. A great deal of testimony received from tribal witnesses and from United States Attorneys noted the high degree of turnover in BIA law enforcement

personnel and identified a lack of comparable salaries as a primary source of the turnover problem.

An additional factor noted as contributing to the high turnover among tribal police personnel is the lack of access to appropriate pension or retirement programs. The Committee is concerned about this problem and believes the issue should be addressed. However, the issue extends beyond the law enforcement program and into many other programs contracted by the tribes. For this reason the Committee has not attempted to address the problem in this legislation.

The Committee is also concerned that BIA law enforcement personnel and personnel operating under a tribal contract with the BIA for enforcement of Federal laws comply with standards established under current federal court decisions. The provisions of the United States Constitution are not generally applicable to the operations of Indian Tribal governments. For this reason Congress enacted what is popularly known as the Indian Civil Rights Act of 1968 which, among other things, provides statutory restraints on the operations of tribal governments that are similar, but not identical, to the first ten Amendments to the Constitution. (25 U.S.C. 1302). Enforcement of the standards set forth in the Indian Civil Rights Act is generally a matter for tribal authorities. *Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49 (1978). However, in the area of criminal law, Federal review may be invoked through a writ of habeas corpus. (25 U.S.C. 1303).

Intrinsic to the sovereignty of Indian tribes is the power of a tribe to create and administer a criminal justice system. Indian tribal police forces have long been an integral part of such systems. While the Supreme Court has ruled that Indian tribes do not, as a matter of inherent sovereignty, have criminal jurisdiction over non-Indians within a reservation (*Oliphant* v. *Suquamish Indian Tribe,* 435 U.S. 191 (1978)), in appropriate circumstances, the authority of a tribal police officer to stop and search a non-member of the tribe to investigate an on-reservation violation of state or federal law has been affirmed, and evidence obtained as a result of such action may be admissible in a state or Federal prosecution. *Ortiz-Barraza* v. *United States,* 512 F.2d 1176 (9th Cir. 1975).

Since enactment of the Indian Civil Rights Act of 1968, a number of courts in reported cases have considered the rules applicable to a search and seizure conducted by a tribal police officer. *Ortiz-Barraza* v. *United States, supra*; *State of New Mexico* v. *Railey,* 532 P. 2d 204 (N.M. 1975); *U.S.* v. *Clifford,* 664 F.2d 1090 (8th Cir. 1981); *U.S.* v. *Lester,* 647 F.2d 869 (8th Cir. 1981); *U.S.* v. *Manuel,* 706 F.2d 908 (9th Cir. 1983); *U.S.* v. *Strong,* 778 F.2d 1393 (9th Cir. 1985). Without exception, these cases have arisen in the context of a motion to suppress evidence either in a Federal or a state prosecution. The courts have analyzed these motions in the context of Section 202(2) of the Indian Civil Rights Act (25 U.S.C. 1302(2)), but have consistently considered the issue under the standards of the Fourth Amendment. The Committee concurs with this method of analysis and intends that such rules should govern any law enforcement actions involving enforcement of federal or state laws under this Act.

At least one tribal witness noted the limited authority conferred on BIA law enforcement personnel under the provisions of Section 3055 of Title 18, United States Code, which speaks only in terms of suppression of liquor traffic on reservations. It is the understanding of the Committee that this Act supersedes any investigative or law enforcement limitations that might be implicit in that section of Title 18, U.S.C.

Finally, at least one tribe urged an amendment to exclude from the Indian reservations any law enforcement activities by the BIA except in accordance with prior approval by the tribe. The tribe expressed its concern that the bill would otherwise take law enforcement responsibility, authority, constitutional rights and treaty rights from the tribe. The Committee notes that the BIA has enforced Federal laws within Indian reservations for over 100 years, and this activity has been continually sanctioned by Congress through appropriation Acts. Under the provisions of Section 3(c)(1), Section 4(8), and Section 5(a), 5(c) and 5(e) of this Act, the consent of the tribes is required before the Secretary undertakes any enforcement of tribal laws. In addition, Section 7(d) makes clear that nothing in this Act is intended to alter the civil or criminal jurisdiction of the United States, Indian tribes, or the states, or in any way derogate the inherent or constitutional authorities of the tribes.

LEGISLATIVE HISTORY

H.R. 498 was originally submitted by Executive communication to the Congress during the 100th Congress. It was introduced in the House of Representatives in the 101st Congress by Mr. Rhodes of Arizona and was referred to the Committee on Interior and Insular Affairs. On May 23, 1989, the measure passed the House of Representatives and was submitted to the Senate where it was referred to the Select Committee on Indian Affairs for consideration. A hearing was held by the Select Committee on Indian Affairs on July 21, 1989. The bill was considered by the Select Committee in an open business session on September 15, 1989, and was ordered reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In open business session on September 15, 1989, the Select Committee on Indian Affairs, by a unanimous vote of a quorum present, ordered the bill, with an amendment in the nature of a substitute, reported with the recommendation that the Senate adopt the bill as amended.

SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 cites the short title of the Act as the "Indian Law Enforcement Reform Act."

Section 2

Section 2 sets out the definitions of several terms used in the Act.

Section 3

Subsection (a) provides that the Secretary acting through the Bureau of Indian Affairs is responsible for providing or assisting with the provision of law enforcement services in Indian country as provided for in this Act.

Subsection (b) provides for the creation of a Division of Law Enforcement Services within the BIA which shall be responsible for providing law enforcement services in Indian country.

Subsection (c) describes in detail the responsibilities and duties of the Division of Law Enforcement Services.

Subsection (d), paragraph (1) provides for the establishment of a separate Branch of Criminal Investigations within the Division of Law Enforcement Services which shall be responsible for the investigation and presentation for prosecution of cases from within Indian country involving violations of sections 1152 and 1153 of Title 18, U.S.C. In addition, this section authorizes the Secretary to develop interagency agreements with the Department of Justice and provides for the promulgation of guidelines by the relevant United States Attorneys.

Paragraph (2) provides that the Branch of Criminal Investigations shall not be responsible for routine law enforcement or police operations.

Paragraph (3) provides that the Secretary must adopt regulations requiring, and establishing procedures for, close and active cooperation and consultation with tribal leaders and tribal law enforcement personnel with respect to their activities on the reservation.

Subsection (e) provides that the Secretary shall establish appropriate standards of education, experience, training, and other relevant qualifications for BIA law enforcement personnel. It also provides that the Secretary shall establish GS grade classifications within the Division at levels commensurate with the responsibilities of such positions and in establishing such grades, the Secretary shall insure that BIA pay scales for such personnel are comparable to the law enforcement pay scales of other Federal agencies.

Section 4

Section 4 provides that the Secretary may charge employees of the BIA with law enforcement responsibilities in Indian country and may authorize those employees (1) to carry firearms, (2) to execute and serve legal process, (3) to make arrests, (4) to offer rewards, (5) to make inquiries and administer oaths, (6) to wear a uniform and carry credentials, (7) to perform related law enforcement duties, and (8) to assist other law enforcement agencies in carrying out their responsibilities.

Section 5

Subsection (a) authorizes the Secretary to enter into agreements for the use of personnel or facilities of a Federal, tribal, state or other governmental agency to aid in the enforcement of Federal criminal law, and tribal law where the tribe has consented, within Indian country. The Secretary may authorize such personnel to perform those functions set out in section 4.

Subsection (b) provides that any agreement entered into under this section shall be in accord with an agreement between the Secretary and the Attorney General.

Subsection (c) requires the Secretary to consult with the affected Indian tribe prior to entering into an agreement under this section for the use of non-Federal personnel in any area under the jurisdiction of the Indian tribe. The Secretary may not use the personnel of a non-Federal agency under this section if the Indian tribe having jurisdiction over such area of Indian country has objected to the use of such personnel.

Subsection (d) provides that other Federal agencies can enter into law enforcement agreements under this section with the Secretary notwithstanding the limitations on inter-agency agreements contained in section 1535, title 31, United States Code.

Subsection (e) provides that Federal law enforcement agencies can enter into agreements with Indian tribes relating to the enforcement of the laws of the United States or the Indian tribe.

Subsection (f) provides that non-Federal personnel under any agreement under this section shall be considered an employee of the Department of Interior only for purposes of section 3374(c)(2) of title 15, U.S.C., relating to assignments of employees from State, tribal, or local governments; sections 111 and 1114 of title 18, U.S.C., relating to assaulting or killing Federal officials or employees, and subchapter III of chapter 81 to title 5, U.S.C., relating to work injury compensation for law enforcement officers not employed by the United States.

Section 6

Section 6 provides that the Secretary may prescribe regulations carrying out the Act after consultation with the U.S. Attorney General. It also provides that the Secretary may prescribe regulations relating to the consideration of applications for contracts under the authority of the Indian Self-Determination Act to perform the functions of the Branch of Criminal Investigations after consultation with the U.S. Attorney General.

Section 7

Subsection (a) provides that the Secretary shall have investigative jurisdiction over violations of Federal crimes in Indian country subject to an agreement with the U.S. Attorney General.

Subsection (b) provides that BIA law enforcement personnel shall cooperate with the law enforcement agency having primary investigative jurisdiction over the offense committed.

Subsection (c) provides that this Act does not invalidate or diminish any delegation of authority of the Secretary prior to enactment of this Act.

Subsection (d) provides that the law enforcement jurisdictions and authorities of all non-Federal entities and all Federal entities other than the Department of Interior shall not be affected by this Act except as provided in Section 11.

Section 8

Section 8 authorizes the Secretary to provide a uniform allowance of not to exceed $400 a year for law enforcement officers notwithstanding the limitations of section 5901(a) of title 5, U.S.C.

Section 9

Section 9 provides that expenses under this Act shall be paid from amounts authorized by, and appropriated under, the Act of November 2, 1921 (25 U.S.C. 13).

Section 10

Subsection (a) authorizes responsible FBI or BIA investigators to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe involved which states the reasons for declining to pursue an investigation or for terminating one.

Subsection (b) authorizes the U.S. Attorney to submit a similar report to the appropriate governmental and law enforcement officials of the Indian tribe involved where the U.S. Attorney declines to prosecute an alleged criminal violation or terminates a prosecution of such an alleged violation.

Subsection (c) provides that when the declined or terminated action under subsection (a) and (b) above, involves an Indian accused, the relevant agency may turn over its case file on the matter to the appropriate tribal officials to facilitate a possible prosecution under tribal law.

Subsection (d) provides that the Federal agency or U.S. Attorney may withhold or refuse to disclose any confidential or privileged communication or information. This subsection also provides that the Federal agencies shall promulgate regulations and adopt standards for the protection of such communications and information.

COST AND BUDGETARY CONSIDERATION

The cost estimate for H.R. 498, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 18, 1989.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 498, the Indian Law Enforcement Reform Act, as ordered reported by the Senate Select Committee on Indian Affairs, September 15, 1989. CBO estimates that enactment of this bill would result in no significant costs to the federal government or to state and local governments.

H.R. 498 would provide a statutory foundation for the ongoing law enforcement activities of the Bureau of Indian Affairs (BIA) on Indian reservations and in Indian country. The functions authorized in the bill are already undertaken by the BIA under various less comprehensive authorities. H.R. 498 would not authorize new

activities or funding, and therefore would not result in any new costs to the federal government.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 498 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The only communication received by the Committee from the Executive Branch with respect to H.R. 498 was in the form of testimony. The testimony supported enactment of H.R. 498.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that enactment of H.R. 498 will not result in any changes in existing law.

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